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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,042	12/01/2003	Christoph Erdelen	Mo5999D2/LeA 33,030D2	2965
34469	7590	07/28/2006	EXAMINER	
BAYER CROPSCIENCE LP Patent Department 100 BAYER ROAD PITTSBURGH, PA 15205-9741			PRYOR, ALTON NATHANIEL	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/725,042

Applicant(s)

ERDELEN ET AL.

Examiner

Alton N. Pryor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 15 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 6-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 6-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/15/06 12/1/03

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

- I. Rejection of claims 6-9 under 35 USC 103(a) as being obvious over Schneidersmann et al (USPN 6730312; 5/4/04) and Thirugnanam (USPN 5506251; 4/9/96) will not be maintained in light of amendment filed 5/15/06.

Applicant has deleted the fungicide, IPBC, from the claims.

- II. New Rejection

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneidersmann et al (US 6730312; 5/4/05) and Thirugnanam (USPN 5506251; 4/9/96). Schneidersmann teaches a composition for controlling insects, Acarina and microorganisms comprising an insecticidally effective amount of a neonicotinoid plus a fungicidally effective amount of at least three fungicides. See abstract. Schneidersmann teaches that the neonicotinoid is Ti-435. See column 3 line 64 – column 4 line 15. Schneidersmann teaches that to the composition can be added additives such as surfactants and extenders. Schneidersmann teaches a method of preparing the composition comprises mixing the active (Ti-435) with surfactants and extenders. See column 10 lines 33-40, column 11 lines 51-65, column 12 line 62 – column 13 line 4. Schneidersmann teaches a method of applying the composition onto crops or plant

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seeds (habitats of insects and fungi) for protection against insects and fungi. See column 14 line 46 – column 15 line 30. Schneidersmann does not teach or suggest the invention comprising 0.1 to 10 parts by weight of the fungicide per part by weight of the insecticide (Ti-435) and 2) the instant fenbuconazole, compound vii, as the fungicide. However, Thirugnanam teaches compositions comprising fungicides and insecticides. Thirugnanam teaches that the fungicide is fenbuconazole and that other active such as insecticides can be added to the composition. See abstract, column 1 lines 35-43, 62-67, column 3 lines 7-13, column 4 Table 1. Thirugnanam teaches a method of applying the composition to plants or soil to control insects. See column 3 lines 28-57. It would have obvious to one having ordinary skill in the art to have modified the invention of Schneidersmann to include fenbuconazole taught by Thirugnanam. One would have been motivated to do this since both inventions suggest 1) the combination of fungicides with insecticides and 2) agricultural application. In doing this, the effectiveness in terms of pests targeted would have been broadened. In the absence of synergistic results for the combination of said actives, the invention is made obvious in light of the prior art cited.

Applicant argues:

Claimed fungicides are structurally similar to triadimenol, and therefore like triadimenol, would yield synergistic results when combined with instant compound of formula (I).

Examine argues:

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It is believable that structurally similar compounds would elicit similar activity because structurally similar compounds have similar size, shape, polarity, physical properties, and chemical properties. Examiner agrees that triadimenol is structurally similar to fungicides (i), (iii)-(vi), (viii)-(xi) wherein R1 possesses a phenyl group (aromatic) and R2 is non-aromatic as in triadimenol. However, Examiner disagrees with triadimenol being structurally similar to fungicides (ii), (vii), and (xii) since R2 in fungicides (ii), (vii) and (xii) possesses aromaticity, whereas R2 in triadimenol is non-aromatic. Triadimenol differing structurally from fungicides (ii), (vii) and (xii) would be expected to differ in chemical and physical properties from fungicides (ii), (vii) and (xii). For this reason, it is not believable that triadimenol would exhibit similar activity as fungicides (ii), (vii) and (xii) and the rejection above is a made with respect to fenbuconazole (vii).

### ***Election Status***

The elected invention comprising Ti-435 and triadimenol is allowable. Applicant provides synergistic data for the combination.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

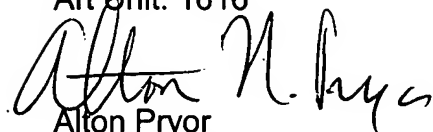
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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A handwritten signature in black ink, appearing to read "Alton N. Pryor". The signature is written in a cursive style with a large initial "A" and a stylized "N".

Alton Pryor

Primary Examiner

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